

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-298-W/S - ORDER NO. 2002-9
JANUARY 10, 2002

IN RE: Amendment to Regulations Regarding Bonds) ORDER
for Water and Wastewater Utilities) PROMULGATING
) AMENDED
) REGULATIONS

This matter comes before the Public Service Commission of South Carolina (the Commission) for hearing on a proposal to amend 26 S.C. Code Ann. Regs. 103-512.3.1 and 103-712.3.1, which would increase the amount of bonds or certificates of deposits that water and wastewater utilities must post with the Commission prior to constructing, operating, maintaining, acquiring, expanding, or improving any facility or system. At present, these two regulations require water and wastewater utilities to post a bond with the Commission based on the number of customers each utility has received authorization to serve from the Department of Health and Environmental Control (DHEC).

Accordingly, after proper notice in the State Register, a hearing was held before the Commission on December 6, 2001, at 10:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive in Columbia, South Carolina. The Honorable William Saunders, Chairman, presided. Jocelyn Boyd, Staff Counsel, represented the Commission Staff, and presented the testimony of Charles A. Creech of the

Commission's Utilities Department. No other presentations were made, nor were any other written comments received.

The record reveals that effective June 1, 1999, the General Assembly in S.C. Code Ann. Section 58-5-720 (Supp. 2000) increased the minimum and maximum amount of bonds or certificates of deposits that water and wastewater utilities must post with the Commission prior to constructing, operating, maintaining, acquiring, expanding, or improving any facility or system. S.C. Code Ann. Section 58-5-720 (Supp. 2000) requires, in part, that the Commission, prior to the granting of authority or consent to any water or wastewater utility regulated by the Commission, to prescribe as a condition to the consent or approval that the utility file with the Commission a bond with sufficient surety or certificates of deposit, with endorsements as required by the Commission. This bond or certificates of deposit, as approved by the Commission, must be in an amount not less than one hundred thousand dollars and not more than three hundred fifty thousand dollars and payable to the Commission. Creech testified that effective June 1, 1999, the minimum amount of the bond was increased from \$10,000 to \$100,000 and the maximum amount of the bond was increased from \$50,000 to \$350,000. The testimony also reveals that although the General Assembly increased the minimum and maximum amount of the bond or certificates of deposit, the General Assembly did not address the factors that were to be considered by the Commission in determining the amount of bond or certificates of deposit each utility should file.

Currently, the amount of bond is determined by the total number of customers that the utility has received authorization to serve from the DHEC. The current schedule for the amount of bond for water and wastewater utilities is as follows:

<u>Permitted and Authorized Capacity in terms of Total Customers</u>	<u>Amount of Bond</u>
0-200	\$10,000
200-400	\$20,000
400-600	\$30,000
600-800	\$40,000
800 or more	\$50,000

Regarding the Staff's proposed regulations, Creech testified that Staff proposed similar language in the regulations governing bonds for wastewater and water utilities. The proposed language in Regulations 103-512.3.1 and 103-712.3.1 states, "the amount of bond shall be based on, but not limited to, the total amount of the following categories of expenses for twelve months: Operation and Maintenance Expenses, General and Administrative Expenses, Depreciation and Amortization Expenses, Taxes Other than Income Taxes, Income Taxes, and Interest Expenses." Additionally, the proposed regulations state that the minimum amount of the bond shall be \$100,000 and the maximum amount of the bond shall be \$350,000. Further, each water and wastewater provider under the jurisdiction of the Commission shall post a bond with the Commission. Finally, the proposed regulations state that the water and wastewater providers under the jurisdiction of the Commission, shall file a certification that the face amount of bond on file with the Commission complies with the provisions of 103-512.3.1 and 103-712.3.1.

The Commission Staff submitted into the record of this case the jurisdictional documents, including the statement of need and reasonableness as determined by the agency based on an analysis of the factors listed in S.C. Code Ann. Section 1-23-115(C)(1) through (11), except items (4) through (8).

After reviewing the record in this case, we find that certain changes should be made to Staff's proposed regulations prior to this Commission promulgating the regulations. First, we find that the "depreciation and amortization expenses" language should be deleted from the category of expenses used to determine the amount of the bond. Depreciation and amortization expenses are not a debt of a water or wastewater utility and although depreciation and amortization expenses are important for ratemaking purposes, these expenses are not out-of-pocket expenses.

Next, we find the phrase "debt service including" should be inserted before the phrase "interest expenses". Therefore, the last expenses mentioned in the regulations would read as follows: "debt service including interest expenses". Debt service should be added to the proposed regulations as debts of a utility must be paid in order for a water and/or wastewater utility to remain solvent. Therefore, it is only appropriate that debt service be included in determining the appropriate amount of bond. Finally, we find that the proposed regulations should be amended by adding language which requires the Commission Staff to review the annual reports and certifications of water and wastewater utilities to determine if the amount of the bond on file with the Commission accurately reflects the expenses of the utility. A water and wastewater providers' expenses and systems can change annually. Therefore, we find the regulation should also be amended

to direct Staff to review the annual reports and certifications of the water and wastewater utilities, the expenses contained therein, and the review and adjustments made by Staff and instruct Staff to recommend whether the amount of bond on file with the Commission should be increased or decreased.

We hold that the proposed amended regulations, in addition to the modifications outlined in this Order, should be promulgated. We believe that, based on the evidence in the record, this Commission must support the amendment of Regulations 103-512.3.1 and 103-712.3.1. First, S.C.Code Ann. Section 58-5-720 was recently amended by the South Carolina General Assembly. The recent amendment of S.C.Code Ann. Section 58-5-720 resulted in an increased amount of bond or certificates of deposit that water and wastewater utilities must post with the Commission. Therefore, 26 S.C. Code Ann. Regs. 103-512.3.1 and 103-712.3.1 must be amended so that the amount of bonds in these regulations is consistent with the recently amended S.C. Code Ann. Section 58-5-720.

The increased minimum and maximum amount of bonds will provide financial support for a water or wastewater utility that is abandoned or improperly maintained. If water and wastewater utility systems are not properly maintained, the effect on the public health and the environment could be horrific. The increased minimum and maximum amount of bonds that will be posted with the Commission will help deter the detrimental effect an abandoned or improperly maintained system could have on the environment and the public health. Additionally, the increased minimum and maximum amount of bonds will benefit customers who are the victims of abandoned or improperly maintained water or wastewater utility systems.

Accordingly, because of the reasoning stated above, we hereby promulgate the proposed amended regulations, including the modifications to the proposed amended regulations which are mentioned in this Order. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)